

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

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BENJAMIN SMITH, PRO SE,  
Previous TDCJ-CID #579976,

Plaintiff,

v.

2:03-CV-0294

CITY OF MEMPHIS, TEXAS,  
GARY GUNN, Chief of Police,  
JOHN DOE, Officer, and  
LINTON GARDENHIRE,

Defendants.

**MEMORANDUM OPINION AND ORDER OF DISMISSAL**

Plaintiff BENJAMIN SMITH, acting pro se and while a prisoner confined in the Donley County Jail, in Clarendon, Texas, filed suit pursuant to Title 42, United States Code, section 1983 complaining against the above-named defendants and has been given permission to proceed in accordance with Title 28, United States Code, section 1915(b).

On June 9, 2005, the Court issued a Briefing Order giving plaintiff twenty days in which to respond by completing the questionnaire attached to the Order. The response period has expired, and plaintiff has failed to file any responsive pleading or correspondence. Instead, on June 14, 2005, plaintiff's copies of the Briefing Order and of the Filing Fee Order issued contemporaneously therewith were returned to the Court undelivered and bearing the notation, "No Longer in Jail - Attempted Not Known - Return to Sender." It appears plaintiff has abandoned his suit and his claims for relief.

It is the conclusion of the United States District Judge that plaintiff has abandoned this cause and such cause should be dismissed for failure to prosecute. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962) (court possesses inherent power to dismiss sua sponte for lack of prosecution).

IT IS THEREFORE ORDERED:

The referral of the instant cause to the United States Magistrate Judge is hereby withdrawn.

This Civil Rights Complaint is DISMISSED WITHOUT PREJUDICE FOR FAILURE TO PROSECUTE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

The Clerk will mail a copy of this Order to the plaintiff and to any attorney of record by first class mail.

IT IS SO ORDERED.

ENTERED this 5<sup>th</sup> day of July, 2005.

/s/ Mary Lou Robinson  
MARY LOU ROBINSON  
UNITED STATES DISTRICT JUDGE